
(1983) 04 CAL CK 0001
In the Calcutta High Court

Banwari Lal Goal

APPELLANT

Vs

Commr. Corpn. of Calcutta

RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Citation : 86 CWN 670

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : B.C. Dutt and P. Dutta, for the Appellant; P.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Chittatosh Mookerjee, J.—It is no longer disputed that the petitioner had erected 6th and 7th storeys to his Premises No. 17, Shyama Prasad Mookherjee Road, Calcutta without obtaining any sanction from the Corporation of Calcutta. He had also violated several other provisions of the Building Rules contained in the Schedule XVI of the Calcutta Municipal Act, 1951 in respect of the other portions of the said premises. A proceeding u/s 414 of the Calcutta Municipal Act, 1951 was started and the Deputy Commissioner, Corporation of Calcutta after hearing the petitioner ordered for demolition of the 6th and 7th storeys of the said building which had been constructed in unauthorised manner and in gross violation of the Building Rules. The Deputy Commissioner did not however pass any demolition order in respect of the other constructions made in infringement of the Building Rules. The petitioner, being aggrieved, preferred an appeal before the Building Tribunal. Corporation of Calcutta which was heard by Sri L.C. Banerjee, President of the Tribunal and Sri H.K. Ghosh and Sri P.C. Roy Chowdhury, Assessors. On 10th August, 1977 the learned President of the Tribunal upheld the order passed by the Deputy Commissioner and dismissed the appeal. The two Assessors separately recorded the reasons for their disagreement with the views of the learned President of the Tribunal According to the Assessors because of the reasons recorded by them no demolition order

ought to be passed in respect of the 6th and 7th storeys of the premises. The President of the Tribunal also recorded his opinion in respect of the differing views of the Assessors. The President dismissed the appeal and affirmed the order.

2. The petitioner in this writ application has challenged the aforesaid decision of the learned President of the tribunal. The petitioner, in the first place has contended that in terms of Rule 15 of the Calcutta Corporation Tribunal (Conduct of Business) Rules, 1965, the decision ought to be in accordance with the agreed opinion of the Assessors who had dissented from the decision of the learned President of the Tribunal on the question whether the 6th and 7th storeys of the premises ought to be demolished. Under Rule 15(3) of the Calcutta Corporation Tribunal (Conduct of Business) Rules, 1965 the decision on all questions of law and procedure rest solely with the President of the Tribunal. The Rule 15(4) of the said Rules has prescribed that the decision on the question of fact shall be in accordance with the opinion of the President unless both the Assessors agree in holding an opinion different from that of the President in which case the decision shall be in accordance with the agreed opinion of the Assessors. The Rule 15(5) lays down that decision on any question which according to the President is a mixed question of law and fact, shall be in accordance with the opinion of the President but the opinion of each of the Assessors shall also be indicated in the judgment.

3. I am unable to accept the submission of Mr. Bankim Dutt learned advocate for the petitioner, that the question on which the two Assessors had disagreed from the opinion of the President was purely a question of fact and, therefore, the decision ought to be in accordance with the agreed opinion of the Assessors. The Assessors in their note of disagreement concurred with the learned President of the Tribunal that the appellant petitioner had constructed the 6th and 7th storeys of the premises without submitting any plan and without obtaining any sanction at all. The inter-alia, observed "We agree with the President where he remarks that the appellant had audacity to construct". The Assessors purported to give certain reasons for their opinion that no demolition order ought to be passed in respect of the 6th and 7th storeys of the petitioner's premises.

4. Mr. Dutt, learned advocate for the petitioner, has submitted that under subsection (3) of section 414 of the Calcutta Municipal Act, 1951 the Commissioner may order demolition of the erection, alteration or any other work which had been commenced without obtaining any permission required to be obtained under the Calcutta Municipality Act, 1951. In this connection, he has referred to the decision of the Supreme Court in Corporation of Calcutta Vs. Mulchand Agarwalla, Mr. Dutt also has relied upon the Special Bench decision of this Court in Purusottam Lalji and Others Vs. Ratan Lal Agarwalla and Others, .

5. After the aforesaid decision in Corporation of Calcutta v. Mulchand Agarwala (supra) and in the case of Puru. shottam Lalji and others v. Ratan Lal Agarwalla (supra), the Calcutta Municipal (Amendment) Act, 1974 with effect from 26th

March, 1974 had added to section 414(3) the following proviso:

Provided further that where the structure does not contravene any of the provisions of this Act or the Rules made thereunder, the Commissioner may, without prejudice to any other action that may be taken against the person concerned under the provisions of this Act or the Rules made thereunder, allow him to submit proper plan under the rules referred to in Schedule XIV and sanction such plan.

6. For disposal of the present application it is however, unnecessary to consider whether the insertion of the said proviso has any effect upon the extent of the discretion of the Commissioner in ordering demolition or alteration, abortion or other work unlawfully commenced, carried on or completed. The Deputy Commissioner who at the first instance passed the order for demolition of the 6th and 7th storeys of the building had refused to exercise his discretion in favour of the petitioner by not ordering demolition of the 6th and 7th storeys of his building. He had, however, exercised his discretion by allowing several other items of unauthorised works carried out by the petitioner to remain. The question whether the discretion u/s 414(3) of the Act ought to be exercised in petitioner's favour was not a pure question of fact. I have already recorded that the two Assessors did not dissent from the finding of fact made by the learned President of the Tribunal that without obtaining any sanction the petitioner had constructed the 6th and 7th storeys in his building. The Assessors also did not differ from the other finding of the Tribunal that the said unauthorised constructions in the 6th and 7th storeys also infringed Rules 30 and 33 of the Schedule XVI of the Calcutta Municipal Act, 1951.

7. The further question whether the Deputy Commissioner had rightly exercised his discretion by ordering demolition of the aforesaid structures was not a question of fact but the same was a mixed question of law and fact. The Supreme Court in the case of Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, had inter-alia, observed. "In between the domains occupied respectively by questions of fact and of law there is a large area in which both these questions run into each other, forming so to say, enclaves Within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced and then a determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained". In the instant case, one of the questions before the Tribunal was whether or not the Deputy Commissioner had acted arbitrarily and unreasonably by refusing to exercise his discretion and to allow the impugned constructions to stand and whether he had applied wrong principles of law to the facts. The question whether on the facts proved and admitted an order of demolition ought to be made, was a question of law or a mixed question of law and fact. Therefore, under sub-rules (3) and (5) of Rule 15 of the Calcutta Corporation Tribunal (Conduct of Business) Rules, 1965 the decision of the President on the said question whether

the unauthorised constructions ought to be demolished was final. The different opinion of the two. Assessors on the said question of law could not prevail. The appeal was bound to be disposed of in accordance with the opinion of the President.

8. According to the petitioner himself section 414(3) of the Act vested the Commissioner with a discretion and both the Deputy Commissioner and the President of the Tribunal had declined to exercise such discretion in favour of the petitioner by allowing the unauthorised construction in the 6th and. 7th stories of the building to stand. I am unable to hold that such exercise of discretion has been made arbitrarily and without consideration of the relevant facts. Therefore, exercising writ jurisdiction, this court cannot substitute its own views and hold that the said unauthorised constructions ought to be allowed to stand In the case of Corporation of Calcutta v. Mulchand Agarwala (supra), the learned Magistrate u/s 363 of the Calcutta Municipal Act, 1923 refused to pass the demolition order which was upheld in revision by the learned Single Judge of this Court. The Supreme Court held that section 363 of the Calcutta Municipal Act, 1923 did give the Magistrate a discretion whether he should or should not pass a demolition order. The Full Bench in Purusottam Lal and others v. Ratan Lal Agarwala and others (supra), discharged a Rule obtained by neighbouring owners against the order of the Commissioner dropping a proceeding u/s 414 of the Calcutta Municipal Act, 1951 and allowing unauthorised constructions to stand on payment of all charges as per Corporation resolutions. Both the afore said reported cases, the authorities under the Act had exercised discretion in favour of the owner who had made unauthorised constructions and did not order demolition. In the instant case, the Deputy Commissioner and the President of the Tribunal for reasons given by them have declined to exercise such discretion in favour of the petitioner and have ordered demolition of the structures in question. Therefore, I am not in a position to interfere with the decision complained of.

9. The learned President of the Tribunal, inter-alia, found that the impugned constructions had been erected not only in an unauthorised manner but by infringing several Building Rules. According to Mr. Pradip Ghosh, learned advocate for the respondents, the said Building Rules were not relaxable. The President of the Tribunal has also discussed in detail the other reasons contained in the joint opinion given by the two Assessors and also indicated why he was unable to agree with the Assessors opinion. For the foregoing reasons, I dismiss this application without any order as to costs.

Application dismissed